

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBIN R. JORDAN,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant.

4:08CV3217

MEMORANDUM AND ORDER

Plaintiff filed a notice of appeal and a motion for leave to proceed in forma pauperis (“IFP”) while he was incarcerated in the Lancaster County Correctional Facility. (Filing Nos. [25](#) & [28](#)). According to the Prisoner Account Certificate filed by the Lancaster County Correctional Facility, the plaintiff was released from custody on January 9, 2010. (Filing No. [30](#)). Therefore, the plaintiff must file a new Application for Leave to Proceed IFP if he wishes to continue pursuing his appeal in forma pauperis. See, e.g., *McGann v. Comm’r, Social Security Admin.*, 96 F.3d 28, 30 (2d Cir. [1996](#)) (“A released prisoner may litigate without further payment of fees upon satisfying the poverty affidavit requirement applicable to all non-prisoners.”). The plaintiff may, in the alternative, pay the entire appellate filing and docketing fee. However, if plaintiff fails to either file a new IFP application or pay the appellate filing and docketing fee of \$455.00 by February 2, 2010, the court of appeals will be so advised. Under Federal Rule of Appellate Procedure 3(a)(2), the failure to pay the statutory appellate filing and docketing fees does not invalidate the appeal, but is a grounds for the “court of appeals to act as it considers appropriate, including dismissing the appeal.”

Accordingly,

IT IS ORDERED that on or before February 2, 2010, the plaintiff shall either file a new Application to Proceed IFP or pay the appellate filing and docketing fee of \$455.00. If plaintiff fails to timely comply with this memorandum and order, his motion for leave to proceed in forma pauperis will be denied without further notice, and the court of appeals will be advised accordingly.

Dated this 19th day of January, 2010.

BY THE COURT:

s/ Cheryl R. Zwart

United States Magistrate Judge